

Food and Nutrition Service, USDA

§ 235.5

Adult Care Food Program for any fiscal year shall bear the same ratio to the total amount of funds made available for allocation to all such States under this paragraph as the amount of funds allocated to each State under paragraph (a)(2) of this section bears to the amount allocated to all States under that paragraph.

(c) *SAE Funds for the Child and Adult Care Food Program.* If a State elects to have a separate State agency administer the adult care component of the Child and Adult Care Food Program, such separate State agency shall receive a pro rata share of the SAE funds allocated to the State under paragraphs (a)(2), (b)(1), and (b)(4) of this section which is equal to the ratio of funds expended by the State for the adult care component of the Child and Adult Care Food Program during the second preceding fiscal year to the funds expended by the State for the entire Child and Adult Care Food Program during the second preceding fiscal year. The remaining funds shall be allocated to the State agency administering the child care component of the Child and Adult Care Food Program.

(d) *SAE Start-up Cost Assistance for State Administration of Former ROAPs.* For any State agency which agrees to assume responsibility for the administration of food service programs in nonprofit private schools or child and adult care institutions that were previously administered by FNS, an appropriate adjustment in the administrative funds paid under this part to the State shall be made by FNS not later than the succeeding fiscal year. Such an adjustment shall consist of an amount of start-up cost assistance, negotiated with the State agency, of no less than \$10,000 and not exceeding \$100,000, per State.

(e) *SAE Funding Reduction Upon State Agency Termination of a Food Service Program.* For any State agency which terminates its administration of any food service program for which State administrative expense funds are provided under this part, a reduction in the amount of such funds, negotiated with the State agency, shall be made by FNS.

(f) *SAE Funds for ROAPs.* FNS shall have available to it the applicable amounts provided for in paragraphs (a)(1), (a)(2), and (b)(1) of this section, and part 225 of this title, when it is responsible for the administration of a program or programs within a State.

(g) *Reallocation.* Funds allotted to State agencies under this section shall be subject to the reallocation provisions of § 235.5(d).

(Sec. 14, Pub. L. 95-166, 91 Stat. 1338 (42 U.S.C. 1776); sec. 7, Pub. L. 95-627, 92 Stat. 3621 (42 U.S.C. 1776); sec. 7(a), Pub. L. 95-627, 92 Stat. 3622 (42 U.S.C. 1751); Pub. L. 96-499, secs. 201 and 204, 94 Stat. 2599; secs. 805, 812, 814 and 819, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1754, 1759a, 1774 and 1776); E.O. 12372 (July 14, 1982, 47 FR 30959); sec. 401(b) Intergovernmental Cooperation Act of 1968 (31 U.S.C. 6506(c))

[44 FR 48957, Aug. 21, 1979, as amended at 44 FR 51185, Aug. 31, 1979; 44 FR 53489, Sept. 14, 1979; 45 FR 3566, Jan. 18, 1980; Amdt. 11, 48 FR 27892, June 17, 1983; Amdt. 14, 51 FR 27151, July 30, 1986; Amdt. 15, 51 FR 33862, Sept. 24, 1986; Amdt. 17, 55 FR 1378, Jan. 16, 1990; 56 FR 32949, July 17, 1991; 58 FR 42489, Aug. 10, 1993; 60 FR 15462, Mar. 24, 1995]

§ 235.5 Payments to States.

(a) *Method of payment.* FNS will specify the terms and conditions of the State agency's annual grant of SAE funds in conjunction with the grant award document and will make funds available for payment by means of a Letter of Credit issued in favor of the State agency. The total amount of a State agency's grant shall be equal to the sum of the amounts allocated to such agency under § 235.4 plus or minus any adjustments resulting from the reallocation provisions under paragraph (d) of this section plus any transfers under § 235.6(a) and/or § 235.6(c) of this part. The amount of SAE funds made available for payment to a State agency in any fiscal year shall be determined by FNS upon approval of the State agency's administrative plan for the fiscal year under paragraph (b) of this section and any amendments to such plan under paragraph (c) of this section. Funds shall not be made available before the State agency's plan or amendment to such plan, as applicable, has been approved by FNS. However, if

the plan has not been approved by October 1 of the fiscal year, FNS may advance SAE funds to the State agency, in amounts determined appropriate by FNS, pending approval of the plan.

(b) *Administrative plan.* (1) Based on guidance provided by FNS, each State agency shall submit to FNS, by August 15 of each year, a plan for meeting its administrative responsibilities under the National School Lunch Program, School Breakfast Program, Special Milk Program, Child and Adult Care Food Program, and Food Distribution Program in schools and child and adult care institutions as applicable, for the upcoming fiscal year. If FNS determines that a State agency is unable to comply with a due date under this subparagraph, it may grant an extension to the State agency.

(2) The State agency's plan shall include its staffing pattern for State level personnel; a budget for the forthcoming fiscal year showing projected amounts (combined SAE and State funds) by cost category; the total amount of budgeted funds to be provided from State sources; the total amount of budgeted funds to be provided under this part; the State agency's estimate of the total SAE carry-over from the current fiscal year; the State agency's estimate of the total amount of budgeted funds (combined SAE and State funds) attributable to administration of the School Nutrition Programs (National School Lunch, School Breakfast and Special Milk Programs), Child and Adult Care Food Program, and/or Food Distribution Program in schools and child and adult care institutions and to each of the major activity areas of the State agency; and the State agency's estimate of the total Child and Adult Care Food Program two percent audit funds to be used for the forthcoming fiscal year. These activity areas shall be defined and described by the State agency in accordance with guidance issued by FNS and may include such activities as program monitoring, technical assistance, Federal reporting/claims processing, policy implementation, and allocation of foods to recipient agencies.

(3) The basic guidance issued by FNS for preparation of the plan shall provide flexibility in reporting with a

minimal amount of reporting burden for State agencies. Such guidance, however, may be expanded for individual State agencies in order to address specific administrative deficiencies which affect compliance with program requirements and which have been identified by FNS through management evaluations, audits or other means. Except in specific instances where determined necessary by FNS, State agencies shall not be required to maintain expenditure records by activity area or program. State agencies shall refer to Office of Management and Budget Circular A-87, Attachment B to establish cost categories. In accordance with Office of Management and Budget Circular A-102, Attachment F, State agency plans for the forthcoming fiscal year shall include not only the projected expenditures of State funds by the State agency (as required above), but also all projected expenditures of State funds by other divisions of the State that will be applied to the State funding requirement under §235.11(a) of this part.

(4) FNS shall approve a State agency's plan, or any amendment to such plan under paragraph (c) of this section, if it determines that the plan or amendment is consistent with program administrative needs and SAE requirements under this part. In approving a State agency's administrative plan or amendment thereto, FNS shall determine the amount of SAE funds to be made available for payment to the State agency. For any fiscal year, this amount shall be based on the amount of SAE funds justified in the administrative plan as amended, but shall not exceed the total of the following: SAE funds allocated to the State agency under §235.4 of this part for the fiscal year, any SAE funds carried over from the prior fiscal year grant, any SAE funds transferred to the State agency by another State agency within the State under §235.6(a) and/or §235.6(c) of this part and any SAE funds reallocated to the State agency under paragraph (d) of this section.

(5) To the extent practicable, State agencies shall implement their approved plans (as amended). FNS shall monitor State agency implementation

of the plans through management evaluations, State agency reports submitted under this part, and through other available means.

(c) *Amendments to the administrative plan.* A State agency may amend its administrative plan at any time during the fiscal year to justify the need for additional SAE funds up to the limit specified in paragraph (b) of this section. Any such amendment shall provide information in a format consistent with that provided in the State agency's plan under paragraph (b) of this section and must be approved by FNS before additional SAE funds are made available for payment to the State agency. In accordance with guidance provided by FNS, a State agency shall also amend its administrative plan to reflect other changes in funding or funding needs. An amendment of this type shall also provide information in a format consistent with that provided in the State agency's plan, but shall only require FNS approval if it results in a significant reduction in funding level or level of planned activity.

(d) *Reallocation of funds.* Annually, between March 1 and May 1 on a date specified by FNS, of each year, each State agency shall submit to FNS a State Administrative Expense Funds Reallocation Report (FNS-525) on the use of SAE funds. At such time, a State agency may release to FNS any funds that have been allocated, reallocated or transferred to it under this part or may request additional funds in excess of its current grant level. Based on this information or on other available information, FNS shall reallocate, as it determines appropriate, any funds allocated to State agencies in the current fiscal year which will not be expended in the following fiscal year and any funds carried over from the prior fiscal year which will not be expended in the current fiscal year. Reallocated funds shall be made available for payment to a State agency upon approval by FNS of the State agency's plan under this section and an amendment to such plan which covers the reallocated funds. Notwithstanding any other provision of this part, a State agency may, at any time, release to FNS for reallocation any funds that have been allocated, reallocated or transferred to it under this

part and are not needed to implement its approved plan under this section.

(e) *Return of funds.* (1) In Fiscal Year 1991, up to 25 per cent of the SAE funds allocated to each State agency under § 235.4 may remain available for obligation and expenditure in the second fiscal year of the grant. In subsequent fiscal years, up to 20 percent may remain available for obligation and expenditure in the second fiscal year. The maximum amount to remain available will be calculated at the time of the formula allocation by multiplying the appropriate percentage by each State agency's formula allocation as provided under § 235.4(a) through (c). At the end of the first fiscal year, the amount subject to the retention limit is determined by subtracting the amount reported by the State agency as Total Federal share of outlays and unliquidated obligations on the fourth quarter Standard Form (SF) 269, Financial Status Report, from the total amount of SAE funds made available for that fiscal year (i.e., the formula allocation adjusted for any transfers or reallocations). However, funds provided under § 235.4(d) are not subject to the retention limit. Any funds in excess of the amount that remains available to each State agency shall be returned to FNS.

(2) At the end of the fiscal year following the fiscal year for which funds were allocated, each State agency shall return any funds made available which are unexpended.

(3) Return of funds by the State agency shall be made as soon as practicable, but in any event, not later than 30 days following demand by FNS.

[Amdt. 14, 51 FR 27151, July 30, 1986, as amended by Amdt. 17, 55 FR 1378, Jan. 16, 1990; 60 FR 15462, Mar. 24, 1995]

§ 235.6 Use of funds.

(a) Funds allocated under this part and 7 CFR part 225 shall be used for State agency administrative costs incurred in connection with the programs governed by 7 CFR parts 210, 215, 220, 225, 226, and 250 of this title. Except as provided under § 235.6(c), funds allocated under § 235.4, paragraphs (a) and (b) and 7 CFR part 225 shall be used for